

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 5613 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1 Whether Reporters of Local Papers may be
 allowed to see the judgment ? NO

2 To be referred to the Reporter or not ? NO

3 Whether their Lordships wish to see the fair
 copy of the judgment ? NO

4 Whether this case involves a substantial
 question of law as to the interpretation of
 the constitution of India, 1950 or any order
 made thereunder ? NO

5 Whether it is to be circulated to the civil
 judge ? NO

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AMRUTLAL J. PATEL - Petitioner(s)

Versus

BOGILAL GANPATRAI MODI & 3 - Respondent(s)

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Appearance :

MR.SUBHASH G BAROT for Petitioner(s) : 1,

MR DIPAK R DAVE for Respondent(s) : 1,

MR KETAN I ACHARYA for Respondent(s) : 1,

RULE SERVED BY DS for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 28/11/2007

ORAL JUDGMENT

1 This petition challenges order dated 30.06.2001 made by Gujarat State Co-operative Tribunal in Revision Application No. 191 of 2001.

2 It is an accepted fact that respondent No.1 filed Lavad Suit No. 2265 of 1992 against respondent No.2 Society. The dispute between respondent No.1 and the Society was in relation to resolution dated 08.12.1999 whereunder the Society had decided to sell common plot from which, according to respondent No.1, he was having access and ingress in absence of any other road being available. There is a 20 ft. wide road between plot No.25 and the common plot which would also be affected by such resolution.

3 During pendency of the suit an application came to be moved by the plaintiff - respondent No.1 on 16.08.2000 whereby an amendment was sought to amend the cause title and amend the prayer clause. The petitioner was sought to be impleaded as a necessary and proper party along with respondent Nos. 3 and 4 and it was stated that respondent No.2 Society be directed to implement resolution No.10 dated 29.11.1979.

4 The Board of Nominees vide order dated 19.03.2001 allowed the amendment application. Being aggrieved the petitioner preferred Revision Application No. 191 of 2001 before the Tribunal which came to be rejected by impugned order dated 30.06.2001.

5 Mr. S.G.Barot, learned Advocate appearing on behalf of the petitioner has placed reliance on provisions of Section 97 of *The Gujarat Co-operative Societies Act, 1961* (the Act) to contend that the Board of Nominees has erred in allowing the amendment application without appreciating that the amendment application was preferred after nearly eight years from the date of filing of the suit and hence was barred by limitation. Elaborating on the submission it was contended that if respondent No.1 was not entitled to file an independent suit praying for the same relief, which was claimed in the amendment application, by virtue of limitation on the same principles and parity of reasoning the amendment application could not have been granted. In support of the proposition reliance has been placed on the case of *Radhika Devi Vs. Bajrangi Singh And Others (1996) 7 SCC 486*. It was therefore urged that both the Board of Nominees and the Tribunal had respectively erred in granting amendment application and upholding of such order by the Tribunal.

6 Mr.Dipak R. Dave, learned Advocate, appearing on behalf of respondent No.1 vehemently contended that no interference was required as the Tribunal had left all the issues open and the petitioner was entitled to agitate all the

issues of law and fact before the Board of Nominees. According to the learned Advocate limitation was a mixed question of law and fact and therefore it would be open to the petitioner to agitate the said issue when the Board of Nominees proceeded with hearing of the suit.

7 Section 97 of the Act requires that the period of limitation would apply in case of a dispute referred to the Registrar under Section 96 of the Act. In so far as the present case is concerned the period of limitation would be six years from the date on which the act or omission with reference to which the dispute arose took place. There is a consensus amongst the parties that the dispute referred to the Board of Nominees under Section 96 of the Act and the issue raised in the amendment application are related and hence, provisions of Section 97 of the Act would be applicable.

8 As can be seen from the impugned order of the Tribunal as well as the order of Board of Nominees which has been confirmed by the Tribunal none of the authorities have applied their mind to the factum of applicability or otherwise of limitation under Section 97 of the Act. To the contrary, the Tribunal has cursorily referred to the submission of the learned

Advocate for respondent No.1 herein and made a sweeping statement that if amendment is permissible at an appellate stage it can always be granted belatedly by the Board of Nominees. The facts do not warrant such a sweeping statement of law in light of specific provisions of Section 97 of the Act. Both Board of Nominees and the Tribunal ought to have applied their mind to the objection raised on behalf of the petitioner viz. the amendment application being barred by limitation prescribed under Section 97 of the Act. Even if the contention raised on behalf of respondent No.1 that the said issue is a mixed question of law and fact is accepted it is apparent that the said issue is concluded by the orders made by the Board of Nominees and the Tribunal without actually recording any finding as to how limitation would not apply. The Court does not wish to lay down a proposition that where limitation is pleaded as an issue the authorities are bound to decide the same at the threshold because in a given set of facts it is always open to decide the issue of limitation along with other issues on merits.

9 However, in the fact situation of the present case if the petitioner succeeds in his plea that the amendment application is barred by limitation the petitioner would not be required to

be impleaded nor undergo the process of hearing of the suit once the petitioner is not impleaded. Hence, the Board of Nominees was required to decide the issue of limitation as a preliminary issue at the threshold before deciding whether the amendment application could be granted.

10 In the circumstances, order dated 30.06.2001 made by the Tribunal and order dated 19.03.2001 made by Board of Nominees in relation to the amendment application are hereby quashed and set aside and the amendment application shall stand revived and restored to file for being decided afresh by the Board of Nominees. The Board of Nominees is directed to decide the issue of limitation as a separate and independent preliminary issue qua the amendment application moved by respondent No.1 before proceeding further with the hearing of the suit.

11 The petition is allowed accordingly in the aforesaid terms. Rule made absolute. There shall be no order as to costs.

Sd/-
(D.A. Mehta, J.)